



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Power Supply Contract between the City of Lodi and Fairmont Sign Company, Inc.

**MEETING DATE:** June 21, 2000

**PREPARED BY:** Electric Utility Director


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**RECOMMENDED ACTION:** That the City Council authorize the City Manager to execute the attached Power Supply Contract (Contract) between the City of Lodi and Fairmont Signs Company, Inc. (Customer).

**BACKGROUND INFORMATION:** In consideration of the Customer's providing significant new employment and the City's power supply resource at which time negotiations commenced, the City and the Customer desire to execute the attached economic development contract.

The Contract is designed to give the Customer maximum flexibility with regard to personnel shift assignments and production schedules while providing a measure of price certainty for both the City and the Customer. The Contract is similar to those between the City of Lodi and Apache Plastics, and the City of Lodi and Arkay Plastics.

**FUNDING:** Not applicable


  
Alan N. Vallow  
Electric Utility Director

**PREPARED BY:** Jack Stone, Manager, Business Planning and Marketing

ANV/JS/lst

C: City Attorney

**APPROVED:** \_\_\_\_\_

  
H. Dixon Flynn - City Manager

**RATE AGREEMENT**  
**BETWEEN**  
**FAIRMONT SIGN COMPANY, INC.**  
**AND**  
**THE CITY OF LODI**

This Agreement is made by and between **FAIRMONT SIGN COMPANY, INC.** ("Customer") and the CITY OF LODI ("City"), collectively called "the Parties" and individually as "Party". This Agreement supersedes the City's mandatory Rate Schedule assignment for this Customer.

**WITNESSETH:**

**WHEREAS**, City operates an electric utility system supplying electric power to City customers; and

**WHEREAS**, Customer is a manufacturer which will be operating in the City; and

**WHEREAS**, Customer has developed a new facility in the City's industrial area; and

**WHEREAS**, Customer has brought new employment to the City; and

**WHEREAS**, City desires to supply the Customer's total load and provide Customer with a contract rate; and

**WHEREAS**, City desires to provide the Customer an economic incentive in the form of a discounted electric rate in return for creating a new business with new electric load in the City.

**NOW, THEREFORE**, the Parties hereto agree as follows:

Section 1. Definitions. Whenever used in this Agreement, in either the singular or plural number, the following terms shall have the following respective meanings:

- 1.1 "Agreement" is this contract.
- 1.2 "City" is the City of Lodi, a California Municipal Corporation.
- 1.3 "Customer" is Fairmont Sign Company, Inc.

- 1.4 "Facility" is the Customer's facility receiving service at secondary voltage, as measured at the low side of the transformer, located at 850 South Guild Avenue, Lodi, California.
- 1.5 "Account" is defined as Customer's Account Numbers 31291 and 31293, the Facility's main electric service, and successor Account Numbers. Fire Pump service, Account Number 31258, is to remain on the applicable published electric rate schedule.
- 1.6 "Parties" are collectively Customer and City.
- 1.7 "kw" is a kilowatt, a demand charge billing unit.
- 1.8 "kwh" is a kilowatt-hour, an energy charge billing unit.
- 1.9 "billing cycle" is the monthly bill.
- 1.10 "Force Majeure", as used herein, means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure. Such an occurrence may include, but is not limited to, acts of God, labor disputes, sudden actions of the elements, actions or inactions by federal, state and municipal agencies, and actions or inactions of legislative, judicial, or regulatory agencies.
- 1.11 "Energy Multiplier" is the sum of 1.000 plus the change in the Western Urban B/C Consumer Price Index (CPI) as published by the Bureau of Labor Statistics for the previous calendar year. Following the initial year of the Contract, the Energy Multiplier will be in effect for bills rendered on and after February of the applicable year. Succeeding yearly Energy Multipliers will be the product of the previous Energy Multiplier and the sum of 1.000 plus the change in the Consumer Price Index for the previous calendar year. In no case will the Energy Multiplier be less than 1.000.

Section 2. Rate Application.

The billing cycle charge for the Customer shall be as follows:

**February 1, 2000 through December 31, 2002 Billing Periods:**

Customer Charge:	\$ 125.00
Demand Charge:	\$ 0.00 per kw
Energy Charge:	\$0.05511 per kwh times the Energy Multiplier less the Economic Development Credit
Economic Development Credit:	\$ 0.0002 per kwh Full Time Equivalent (FTE) employee up to a maximum of \$ 0.01000 per kwh. Initial and subsequent FTE totals may be updated at month intervals. The Electric Utility Department may update the FTE total at more frequent intervals when in its sole judgment an update is appropriate.

Energy Multiplier: as defined in Section 1.11 above

Section 3. Term of Agreement.

- 3.1 Upon signing by all Parties, this Agreement shall be binding for bills rendered on or after February 1, 2000, and shall remain in effect subject to Paragraphs 3.2 and 3.3 below, for bills rendered through December 31, 2002.
- 3.2 If either party fails to perform any of the provisions of this Agreement, the other party may, by written notice given within thirty days of such failure to perform, terminate this agreement. Customer may appeal such termination in writing to the Electric Utility Director. This is in addition to any other legal recourse Customer may have.

- 3.3 This Agreement cannot be terminated without mutual consent of the Parties.
- 3.4 Parties may mutually extend this Agreement from year to year beyond the original term of this Agreement.

Section 4. Force Majeure.

- 4.1 If either Party because of Force Majeure is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:  
  
The non-performing Party, within two weeks after the occurrence of the Force Majeure, shall give the other party a written report describing the particulars of the occurrence.  
  
The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure.
- 4.2 No obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence.
- 4.3 The non-performing Party uses its best efforts to remedy its inability to perform. This subparagraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

Section 5. Assignments.

- 5.1 Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement without the written consent of the other Party.

Section 6. Amendments.

- 6.1 This Agreement may be amended only by written instrument executed by the Parties or their successors.

Section 7. Severability.

- 7.1 In the event that any of the terms, covenants, or conditions of this Agreement shall be held invalid, the Parties intend that all other terms, covenants, and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Agreement.

Section 8. Governing Law.

- 8.1 This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

Section 9. Counterparts.

- 9.1 This Agreement may be executed in counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 10. Headings.

- 10.1 The headings to the articles in this Agreement are intended for convenience only and not for the purpose of interpreting the provisions of this Agreement.

Section 11. Notices.

- 11.1 Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so given, tendered or delivered, as the case may be, by depositing the same in

any United States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address designated below. Changes in such designation may be made by notice similarly given.

11.2 All written notices or questions shall be directed as follows:

To City:               ELECTRIC UTILITY DIRECTOR  
  
                              CITY OF LODI  
  
                              1331 SOUTH HAM LANE  
  
                              LODI CA 95242-3995

To Customer:       FAIRMONT SIGN COMPANY INC.  
  
                              850 SOUTH GUILD AVENUE  
  
                              LODI, CA 95240

Section 12. Non-waiver.

- 12.1 None of the provisions of the Agreement shall be considered waived by either Party except when such waiver is given in writing. The failure of any Party at any time or times to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to future enforcement of that right or obligation or any right or obligation of the Agreement.

Section 13. Warranty of Authority.

- 13.1 Each of the Parties which has executed and delivered this Agreement represents and warrants that it has agreed to be bound by all the terms, covenants, and conditions of this Agreement and has acted with all the requisite capacity and authority and approval of its governing body.



**IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers and their seal to be affixed, as of the day and year herein written.**

CITY OF LODI

FAIRMONT SIGN  
COMPANY, INC.

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H. Dixon Flynn  
City Manager

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Adam Bonislawski  
Vice President

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Date

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Date

Approved as to Form:

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Randall A. Hays  
City Attorney

ATTEST:

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Jacqueline L. Taylor  
Interim City Clerk

RESOLUTION NO. 2000-107

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING  
THE CITY MANAGER TO APPROVE POWER SUPPLY  
CONTRACT WITH FAIRMONT SIGNS COMPANY, INC.

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BE IT RESOLVED, that the Lodi City Council hereby authorizes the City Manager to approve Power Supply Contract with Fairmont Signs Company, Inc.; and

FURTHER RESOLVED, that the City Manager is hereby authorized to execute said contract on behalf of the City.

Dated: June 21, 2000

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I hereby certify that Resolution No. 2000-107 was passed and adopted by the Lodi City Council in a regular meeting held June 21, 2000 by the following vote:

AYES: Council Members – Hitchcock, Land, Nakanishi, Pennino  
and Mann (Mayor)

NOES: Council Members - None

ABSENT: Council Members - None

ABSTAIN: Council Members - None

  
JACQUELINE L. TAYLOR  
Interim City Clerk